IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

OP.No. 23218 of 2000(L)

PETITIONER:

MARIAM PHILIP,
CHOOLLAMKUZHIYIL,
DEVALOKAM P.O.,
KOTTAYAM – 38.

BY ADV. SRI.H.B.SHENOY
SRI.B.ASHOK SHENOY

RESPONDENTS:

THE DIRECTOR OF HEALTH SERVICES,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SMT.SMITHA SUKUMARAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 25/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.NO.23218/2000 L

ORDER ON C.M.P.NO.39118/2000 IN O.P.NO.23218/2000 L

CLOSED

25/05/2007 **SD/-THOTTATHIL B.RADHAKRISHNAN,**
J U D G E.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF ORDER NO.EF2-67/92/DHS DTD. 17/09/92 ISSUED BY THE RESPONDENT.**

EXT.P2: **COPY OF LETTER NO.52212/Hs/90/H&FWD DTD. 12/08/92 ISSUED BY GOVERNMENT OF KERALA.**

EXT.P3; **COPY OF G.O.MS.27/90/H&FWD DTD. 1/02/90 ISSUED BY GOVERNMENT OF KERALA.**

EXT.P4: **COPY OF RELEVANT EXTRACT OF PRELIMINARY GRADATION LIST OF RADIOGRAPHERS FOR THE PERIOD FROM 1/1/86 TO 31/10/90 PUBLISHED BY RESPONDENT.**

EXT.P5: **COPY OF ORDER NO.E3.1361/92/MCHG DTD. 27/06/92 ISSUED BY SUPERINTENDENT OF MEDICAL COLLEGE HOSPITAL, KOTTAYAM.**

EXT.P6: **COPY OF CERTIFICATE DTD. 4/07/1992 ISSUED TO PETITIONER BY M/S.WIPRO GE MEDICAL SYSTEMS LTD., ERNAKULAM.**

EXT.P7; **COPY OF CIRCULAR NO.70/PRC/A1/89/FIN. DTD. 16/10/89 ISSUED BY GOVERNMENT OF KERALA.**

EXT.P8: **COPY OF REPRESENTATION DTD. 18/09/93 SUBMITTED BY PETITIONER TO RESPONDENT.**

EXT.P9: **COPY OF REPRESENTATION DTD. 15/02/99 SUBMITTED BY PETITIONER TO RESPONDENT.**

EXT.P10: **COPY OF JUDGMENT DTD. 28/09/99 OF THIS HON'BLE COURT IN O.P.NO.24121 OF 1999V.**

EXT.P11: **COPY OF ORDER NO.EF2-97156/99/DHS DTD. 27/09/99 ISSUED BY RESPONDENT.**

EXT.P12: **COPY OF ORDER NO.EF2-124200/99/DHS DTD. 22/02/2000 PASSED BY RESPONDENT.**

1ST RESPONDENT'S EXHIBIT:

EXT.R1: **COPY OF THE CERTIFICATE GIVEN BY WIPRO GE MEDICAL SYSTEMS.**

/TRUE COPY/

KSS

THOTTATHIL B. RADHAKRISHNAN, J

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O.P.No. 23218 of 2000

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Dated this the 25th day of May, 2007

J U D G M E N T

The petitioner, while working in the Health Service Department, was indisputably eligible for consideration for appointment by promotion to the post of Chief Radiographer, provided she possessed the qualification prescribed as per Ext.P3 G.O(MS) 27/90/H&FWD dated 01/02/1990. The technical qualifications for an aspirant for promotion to the post of Chief Radiographer in the Health Service Department are a Diploma in Certified Radiological Assistant Course and a certificate obtained from a reputed x-ray manufacturer and supplier in maintenance and repairs of x-ray units. She possessed the aforesaid diploma. She also possessed the general qualification of pass in S.S.L.C examination. By Ext.P6 she is certified to have successfully completed a short term training course conducted by Wipro GE Medical Systems on servicing and maintenance of x-ray equipments. She underwent that course, on being deputed, as evidenced by Ext.P5.

2. However, the petitioner was not considered entitled to draw the scale of Chief Radiographer, from the date of Ext.P6 certification. Thereafter, she again underwent a course from the Human Resources Development and Techniques leading to the issuance of a certificate to her by that institution on 13/02/1996. She was thereafter brought to the scale of pay of Chief Radiographer from 13/02/1996.

3. This original petition is filed contending that the petitioner was entitled to be paid in the scale of Chief Radiographer from the date of Ext.P6 dated 04/07/1992 and she seeks appropriate writ, direction, order for such fixation and consequential reliefs.

4. It is not in dispute that the petitioner is entitled to the scale of pay of Chief Radiographer from the date of acquisition of the qualification in question. In the counter affidavit, the only defence is that Ext.P6 certificate issued by Wipro GE Medical Systems is not in accordance with the technical qualification prescribed and the same could not be acted upon by the Director

of Health Services. The contention in the third paragraph of the counter affidavit sworn to on behalf of the respondent is that the certificate of Wipro GE Medical Systems does not mention that the said firm "is a reputed x-ray manufacturer and supplier" and it was, therefore, that the benefit of the acquisition of qualification as evidenced by Ext.P6 was not acknowledged.

5. Ext.P5 dated 27/06/1992 is the proceedings of the Superintendent of the Medical College Hospital, Kottayam, relieving the petitioner and two others of their duties from that institution, on the afternoon of 27/06/1992, with a direction to report for training at 9a.m on 29/06/1992. The period of training is from 29/06/1992 to 04/07/1992. The training period was to be adjusted against the eligible leave of the respective incumbent. They were also required to produce appointment certificate at the time of rejoining duty after training. The copies of Ext.P5 proceedings is shown to have been addressed to M/s.Wipro GE Medical Systems and the Professor of Radio-diagnosis, Medical College Hospital, Kottayam. The said proceedings are issued by the Superintendent of the Hospital, referring to the subject of

training programme of Radiographer and relying on two letters which are read in those proceedings. The first is letter dated 16/06/1992 of the Branch Service Manager, Wipro GE Medical Systems, Ernakulam. The second is letter dated 19/06/1992 of the Prof. of Radio-diagnosis, Medical College Hospital, Kottayam. On the basis of the aforesaid materials, am I to take the view that the three government servants deputed as per Ext.P5 were sent while in service, for training to an institution without the employer Government being satisfied of the credentials of the institute to which they were being sent to be trained? I am not inclined to take such a view. This is because the regularity and propriety of official acts in the context of the issuance of Ext.P5 which are matters to be presumed unless the contrary is shown, advices me to hold that the Professor of Radio-diagnosis and the Superintendent of the Medical College Hospital and all concerned with the administrative process of choosing Wipro GE Medical Systems as their trainer and deputing the three radiographers, as per Ext.P5, for training, have duly applied their minds and were satisfied as to the sufficiency, competency and appropriateness of the choice of the training and trainer. A

contrary view emanating after the training, merely by stating that Ext.P6 does not mention that Wipro GE Medical Systems is a reputed x-ray manufacturer and supplier is in my view the peak of administrative perversity and reflects total callousness and irresponsible indifference in the matter of handling a public office. Arbitrariness gets manifested to such extent that it tends even to show that it could have been an apparent situation of harassing a government servant. The defence taken in the counter affidavit is one that is unfortunate and totally unacceptable. The same is repelled.

6. In the result, this writ petition is allowed in the following terms:-

i. It is declared that Exts.P5 and P6 together evidence that the petitioner acquired technical qualification as prescribed in paragraph I(2)(a)(ii) of GO(MS)27/90/H&FWD, dated 01/02/1990, on 04/07/1992 , the date of Ext.P6.

ii. Following the declaration as above, it is directed

that the petitioner shall be given her due pay scale on such basis and her pay shall be refixed.

iii. The petitioner having since retired, her last pay shall be recalculated following the aforesaid declarations and directions and her retiral benefits shall be refixed accordingly.

iv. The petitioner shall be paid the arrears accruing on such refixation of retiral benefits within a period of three months from now. All such amounts shall carry interest at the rate of 9% per annum, having regard to the facts situation and circumstances of the case.

Since an order for interest has been imposed and because the refusal to act on Ext.P6 is challenged by the petitioner in 2000, there shall be no order as to costs.

THOTTATHIL B.RADHAKRISHNAN
Judge

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THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No.23218/2000

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JUDGMENT

25th May, 2007